IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

No. 80-1084

Mountain States Legal Foundation, et al.

Petitioners,

v.

Douglas M. Costle, et al.

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE
UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

BRIEF OF THE LEGISLATIVE COMMISSION OF THE STATE OF NEVADA AS AMICUS CURIAE

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The interest of the legislative commission of the State of Nevada, as amicus curiae in this proceeding, is respectfully to show to the court that other state legislatures, specifically the legislature of the State of Nevada, have the same concerns as those expressed by the petitioning members of the legislature of the State of Colorado in vindicating their right as legislators, independently of the attorney general, to bring and maintain an action where the interest of the legislature in the performance of its own duties is involved, whether or not the interest of the state as a whole is also involved.

In 1963 the Nevada legislature required that its legislative counsel must be "an attorney licensed to practice law in the State of Nevada" and in 1965 it added to his duties "[w]hen deemed [by the legislative commission] necessary or advisable to protect the official interests of the legislature or one or more legislative committees, * * * to appear in, commence, prosecute, defend or intervene in any action * * * in any court or agency of this state or of the United States." NRS 218.690 and 218.697, containing these respective provisions, are set forth in the addendum to this brief.

This authority has been exercised, formally as intervener and informally as amicus curiae or otherwise, several times in the district and supreme courts of Nevada. One instance of its formal exercise, Kimble et al. v. Swackhamer et al., reached this court for disposition: 99 S.Ct. 51 and 713 (1978). As illustrations of how the legislative commission believes the official interest of the legislature is involved in a case such as the one at bar, we offer these examples of past or potential action of a federal agency to compel obedience to one federal demand by withholding money otherwise available to a state under another federal program.

The act of coercion most galling to the Western states generally is the imposition of a national maximum speed limit, 55 miles per hour, on pain of losing all federal aid for its highway system: 23 U.S.C. § 154. In Nevada, because the United States holds title to almost 87 percent of the land, this aid amounts to serve 95 percent of the budget for highway construction.

Potentially, Nevada could be faced with a situation very similar to Colorado's. NRS 445.610445.710, set forth in the addendum to this brief, provide for the control of emissions from motor vehicles. In particular, NRS 445.630 requires such a program in counties whose population is 100,000 or more, and NRS 445.640 provides a schedule for the inspection of used vehicles as a progressively more severe requisite to transfer or registration. Clark County, the larger of the two metropolitan counties to which the schedule applies, has a severe need to improve its treatment of sewage, for which federal assistance is available pursuant to 33 U.S.C. § 1251 (a)(4). Although 33 U.S.C. § 1256 (e) prohibits grants only to states whose programs for control of water pollution fail to meet prescribed standards, the experience of Colorado warns that deferral of the program to control motor vehicle emissions might have a similar effect.

A legislative subcommittee studying means of employing recipients of welfare was informed that if Nevada adopted a program similar to one in Utah, it would be denied all assistance under the Social Security Act, not only aid to families with dependent children but aid to the medically indigent and other social services as well. Although no positive statutory basis for this threat was cited, research into the cases decided by this court and the lower federal courts indicates that the threat is credible.

The Legislative Commission therefore supports the petition for certiorari, in the hope that a decision of this court upon the case presented will clearly establish in the federal courts the right of a legislature or its members to appear and be heard upon matters affecting its duty to establish the public policy of the state.

Dated this 11th day of February, 1981

Respectfully submitted,

Frank W. Daykin

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Certificate of Service

On _____, 1981, pursuant to paragraph 1 of SCR 33, I mailed three copies of the foregoing motion to:

(1) The Solicitor General
Department of Justice
Washington, D.C. 20530

on behalf of the United States Environmental Protection Agency and its administrator and regional administrater; and

(2) J.D. MacFarlane, Esq.
Attorney General
1525 Sherman Street, 3rd Floor
Denver, Colorado 80203

on behalf of the State of Colorado upon his relation.

(3) Gale A. Norton, Esq.
Mountain States Legal Foundation
1200 Lincoln Street--Suite 600
Denver, Colorado 80203

_____
Frank W. Daykin
Legislative Counsel

218.690 Legislative counsel: Qualifications; duties. The legislative counsel shall:

1. Be an attorney licensed to practice law in the State of Nevada and shall be versed in some or all of the following: Political science, parliamentary practice, legislative procedure, and the methods of research, statute revision and bill drafting.

2. Perform the duties required by this chapter and chapter 220 of NRS.

[5:134:1953]—(NRS A 1963, 484, 1015; 1971, 1546; 1975, 344)

218.697 Commencement, defense of actions, proceedings by legislative counsel when directed by legislative commission; payment of costs, expenses.

1. When deemed necessary or advisable to protect the official interests of the legislature or one or more legislative committees, the legislative commission may direct the legislative counsel and his staff to appear in, commence, prosecute, defend or intervene in any action, suit, matter, cause or proceeding in any court or agency of this state or of the United States.

2. Expenses and costs incurred pursuant to this section may be paid by the legislative commission from the legislative fund.

(Added to NRS by 1965, 1461; A 1971, 1546)

445.610 Definitions. As used in NRS 445.610 to 445.710, inclusive, unless the context otherwise requires:

1. "Authorized station" means a station licensed by the department of motor vehicles for inspecting motor vehicles and pollution control devices for compliance with this chapter or any applicable federal or commission regulation and for installing, repairing and adjusting pollution control devices and motor vehicles to meet the commission's requirements.

2. "Commission" means the state environmental commission.

3. "Evidence of compliance" includes a certificate issued when a motor vehicle has been inspected and:

(a) Has the required equipment; or

(b) Does not meet the emission control requirements after the repairs have been made and the commission waives compliance.

4. "Fleet station" means a facility which is licensed by the department to conduct inspections of the motor vehicles of qualified owners or lessees.

5. "Motor vehicle" means every self-propelled vehicle in, upon or by which any person or property is or may be transported or drawn upon a public highway except devices moved by human or animal power or used exclusively on stationary rails.

(Added to NRS by 1973, 1702; A 1977, 920)

445.620 Power of commission to prescribe uniform emission standards for internal combustion engines.

1. The state environmental commission may by regulation prescribe standards for exhaust emissions, fuel evaporative emissions and visible smoke emissions from mobile internal combustion engines on the ground or in the air, including but not limited to aircraft, motor vehicles, snowmobiles and railroad locomotives.

2. Standards for exhaust emissions which apply to a trimobile must be based on standards which were in effect in the year in which the engine of the trimobile was built.

3. Such regulations must be uniform throughout the state.

(Added to NRS by 1973, 1702; A 1979, 857)

445.625 Information concerning emission control programs: Collection, interpretation, correlation; open to public.

1. The commission, in cooperation with the department of motor vehicles, shall adopt regulations which establish procedures for collecting, interpreting and correlating information concerning programs to control emissions from motor vehicles and any benefits which result from an inspection program.

2. All information received by the commission or the department is open to public inspection.

(Added to NRS by 1977, 919)

445.630 Commission regulations: Control of motor vehicle emissions; program of motor vehicle inspection and testing. [Effective until date in 1980 when decennial census reported.]

1. In any county having a population of 100,000 or more, the commission shall, in cooperation with the department of motor vehicles and any local air pollution control agency, adopt regulations for the control of motor vehicle emissions.

2. In counties having a population of less than 100,000, if the commission determines that it is feasible and practicable to implement a program of inspecting and testing motor vehicles and motor vehicle emission control systems, and if the implementation of such program is deemed necessary to achieve or maintain prescribed ambient air quality standards in areas of the state designated by the commission, the commission shall, in cooperation with the department of motor vehicles and any local air pollution control agency established under NRS 445.546 which has jurisdiction in a designated area, adopt regulations and transportation controls as may be necessary to implement such a program.

3. The regulations shall distinguish between light-duty and heavy-duty motor vehicles and may prescribe:

(a) Appropriate criteria and procedures for the approval, installation and use of motor vehicle pollution control devices; and

(b) Requirements for the proper maintenance of motor vehicle pollution control devices and motor vehicles.

445.630 (continued)

4. The regulations shall establish:

(a) Requirements by which the department of motor vehicles shall license authorized stations to inspect, repair, adjust and install motor vehicle pollution control devices, including criteria by which any person may become qualified to inspect, repair, adjust and install such devices.

(b) Requirements by which the department of motor vehicles may license an owner or lessee of a fleet of three or more vehicles as a fleet station provided that such owner or lessee complies with the regulations of the commission. The fleet station shall only certify vehicles which constitute that fleet.

(c) Requirements by which the department provides for inspections of motor vehicles owned by this state and any of its political subdivisions.

5. The commission shall consider, before adopting any regulation or establishing any criteria pursuant to paragraph (a) of subsection 3:

(a) The availability of devices adaptable to specific makes, models and years of motor vehicles.

(b) The effectiveness of such devices for reducing the emission of each type of air pollutant under conditions in this state.

(c) The capability of such devices for reducing any particular type or types of pollutants without significantly increasing the emission of any other type or types of pollutant.

(d) The capacity of any manufacturer to produce and distribute the particular device in such quantities and at such times as will meet the estimated needs in Nevada.

(e) The reasonableness of the retail cost of the device and the cost of its installation and maintenance over the life of the device and the motor vehicle.

(f) The ease of determining whether any such installed device is functioning properly.

6. Population is determined by using the last preceding national census of the Bureau of the Census of the United States Department of Commerce.

(Added to NRS by 1973, 1703; A 1977, 920)

445.630 Commission regulations: Control of motor vehicle emissions; program of motor vehicle inspection and testing. [Effective in 1980 when decennial census reported.]

1. In any county having a population of 100,000 or more, the commission shall, in cooperation with the department of motor vehicles and any local air pollution control agency, adopt regulations for the control of motor vehicle emissions.

2. In counties having a population of less than 100,000, if the commission determines that it is feasible and practicable to carry out a program of inspecting and testing motor vehicles and motor vehicle emission control systems, and if carrying out the program is deemed necessary to achieve or maintain prescribed ambient air quality standards in areas of the state designated by the commission, the commission shall, in cooperation with the department of motor vehicles and any local air pollution control agency established under NRS 445.546 which has jurisdiction in a designated area, adopt regulations and transportation controls as may be necessary to carry out the program.

445.630 (continued)

3. The regulations shall distinguish between light-duty and heavy-duty motor vehicles and may prescribe:

(a) Appropriate criteria and procedures for the approval, installation and use of motor vehicle pollution control devices; and

(b) Requirements for the proper maintenance of motor vehicle pollution control devices and motor vehicles.

4. The regulations shall establish:

(a) Requirements by which the department of motor vehicles shall license authorized stations to inspect, repair, adjust and install motor vehicle pollution control devices, including criteria by which any person may become qualified to inspect, repair, adjust and install those devices.

(b) Requirements by which the department of motor vehicles may license an owner or lessee of a fleet of three or more vehicles as a fleet station if the owner or lessee complies with the regulations of the commission. The fleet station shall only certify vehicles which constitute that fleet.

(c) Requirements by which the department provides for inspections of motor vehicles owned by this state and any of its political subdivisions.

5. The commission shall consider, before adopting any regulation or establishing any criteria pursuant to paragraph (a) of subsection 3:

(a) The availability of devices adaptable to specific makes, models and years of motor vehicles.

(b) The effectiveness of those devices for reducing the emission of each type of air pollutant under conditions in this state.

(c) The capability of those devices for reducing any particular type or types of pollutants without significantly increasing the emission of any other type or types of pollutant.

(d) The capacity of any manufacturer to produce and distribute the particular device in such quantities and at such times as will meet the estimated needs in Nevada.

(e) The reasonableness of the retail cost of the device and the cost of its installation and maintenance over the life of the device and the motor vehicle.

(f) The ease of determining whether any such installed device is functioning properly.

(Added to NRS by 1973, 1703; A 1977, 920; 1979, 547, effective in 1980 when decennial census reported)

445.632 Regulations of department of motor vehicles: Licensing of stations; manner of inspection; fee, bond, insurance; pamphlet for vehicle owners.

1. The department of motor vehicles shall adopt regulations which:

(a) Prescribe requirements for licensing authorized stations and fleet stations;

(b) Prescribe the manner in which the stations inspect motor vehicles and issue evidence of compliance;

(c) Prescribe the diagnostic equipment necessary to perform the required inspection;

(d) Provide for any fee, bond or insurance which is necessary to carry out the provisions of NRS 445.610 to 445.670, inclusive; and

445.632 (continued)

(e) Provide for the issuance of a pamphlet for distribution to owners of motor vehicles. The pamphlet shall contain information explaining the reasons for and the methods of the inspections.

2. The department shall issue a copy of the regulations to each authorized station and to each fleet station.

(Added to NRS by 1977, 919; A 1979, 1034)

445.634 Inspection of stations; grounds for suspension, revocation of station's license.

1. The department of motor vehicles shall establish procedures for inspecting the authorized stations and the fleet stations and may require a station to submit any material or document which is used by the station in its inspection program.

2. The department may suspend or revoke the license of a station if:

(a) The station is not complying with the provisions of NRS 445.610 to 445.670, inclusive.

(b) The owner of the station refuses to furnish the department with the requested material or document.

(c) The station has issued a fraudulent certificate of compliance whether intentionally or negligently. A "fraudulent certificate" includes, but is not limited to:

(1) A back-dated certificate;

(2) A post-dated certificate; and

(3) A certificate issued without an inspection.

(d) The approved inspector does not follow the prescribed test procedure.

(Added to NRS by 1977, 919; A 1979, 1034)

445.635 Compulsory motor vehicle emission inspection program: When evidence of compliance required for certain used motor vehicles. The authority set forth in NRS 445.630 providing for a compulsory motor vehicle emission inspection program is limited as follows:

1. Except as provided in this subsection, in counties having a population of 100,000 or more as determined by the last preceding national census of the Bureau of the Census of the United States Department of Commerce:

(a) On or after July 1, 1977, and before July 1, 1981, only used motor vehicles being registered to a new owner or being registered for the first time are required to have evidence of compliance;

(b) On or after July 1, 1981, all used motor vehicles being registered or reregistered are required to have evidence of compliance.

The board of county commissioners of those counties may by ordinance require compliance with the provisions of paragraph (b) by a specified date before July 1, 1981.

2. In other counties where the commission puts a program into effect:

(a) On or after February 1, 1978, all used motor vehicles being registered to a new owner are required to have evidence of compliance.

(b) On or after September 1, 1978, only used motor vehicles being registered to a new owner or being registered for the first time in this state are required to have evidence of compliance.

(c) On or after July 1, 1981, all used motor vehicles being registered are required to have evidence of compliance.

(Added to NRS by 1975, 1408; A 1977, 921; 1979, 989)

445.640 Evidence of emission control compliance prerequisite to transfer of used motor vehicle in certain areas.

1. Subject to any applicable limitation of NRS 445.610 to 445.670, inclusive, and any regulation adopted pursuant thereto, no used motor vehicle as defined in NRS 482.132 may be registered in certain areas of this state as designated by the commission unless the application for registration is accompanied by evidence of emission control compliance issued by any authorized station or fleet station certifying that the vehicle is equipped with motor vehicle pollution control devices required by federal regulation or such other requirements as the commission may by regulation prescribe under the provisions of NRS 445.610 to 445.710, inclusive.

2. If the seller of a used vehicle is required, pursuant to the provisions of NRS 482.424, to complete a dealer's report of sale, such seller shall also provide the buyer with any evidence of emission control compliance required pursuant to subsection 1.

3. The requirements of this section apply only in counties where a program of inspecting and testing motor vehicles and motor vehicle emission control systems has been implemented pursuant to NRS 445.630.

(Added to NRS by 1973, 1703; A 1975. 1074, 1407; 1977, 921)

445.650 Exceptions to requirement of evidence of emission control compliance. The provisions of NRS 445.640 do not apply to:

1. Transfer of registration or ownership between:

(a) Husband and wife; or

(b) Companies whose principal business is leasing of vehicles, if there is no change in the lessee or operator of the vehicle.

2. Motor vehicles which are subject to prorated registration pursuant to the provisions of NRS 706.801 to 706.861, inclusive, and which are not based in this state.

3. Transfer of registration if evidence of compliance was issued within 90 days before the transfer.

4. Motor vehicles which have been licensed by the department of motor vehicles as experimental vehicles.

(Added to NRS by 1973, 1704; A 1977, 922; 1979, 568)

445.660 State department of conservation and natural resources to provide assistance. In furtherance of the provisions of NRS 445.610 to 445.710, inclusive, and the enforcement thereof, the state department of conservation and natural resources shall consult with the department of motor vehicles and furnish them with technical information, including testing techniques, procedures for quality assurance and standards adopted by the commission and instruction for emission control features and equipment.

(Added to NRS by 1973, 1704; A 1973, 1406; 1977, 922, 1038, 1143)

445.670 Evidence of compliance prerequisite to registration of vehicle in certain areas; submission of evidence of compliance by owner, lessee of fleet of vehicles.

1. Except as provided in subsection 2, registration branch offices of the department of motor vehicles and county tax assessor offices, acting as department agents in the collection of registration fees, shall not register a vehicle which is based in areas of this state designated by the commission until evidence of compliance with NRS 445.610 to 445.710, inclusive, has been provided.

2. An owner or lessee of a fleet of three or more vehicles may, upon application to the department of motor vehicles, submit evidence of compliance for his motor vehicles in a manner determined by the department.

(Added to NRS by 1973, 1704; A 1977, 922)

445.680 Installation, inspection of motor vehicle pollution control device. Any person may install a motor vehicle pollution control device, but no person who is not employed by an authorized station or fleet station may install a device for compensation. No such device shall be deemed to meet the requirements of NRS 445.630 to 445.670, inclusive, or regulations of the commission or department unless it has been inspected in an authorized station or a fleet station and evidence of compliance has been issued by that station.

(Added to NRS by 1973, 1704; A 1977, 922)

445.690 Exemption of certain classes of motor vehicles; waiver from provisions of NRS 445.630 to 445.670, inclusive.

1. The commission may provide for exemption from the provisions of NRS 445.630 to 445.670, inclusive, of designated classes of motor vehicles, including classes based upon the year of manufacture of motor vehicles.

2. The commission shall provide for a waiver from the provisions of NRS 445.630 to 445.670, inclusive, if compliance involves repair and equipment costs which exceed the limits established by the commission. The commission shall establish the limits in a manner which avoids unnecessary financial hardship to motor vehicle owners.

(Added to NRS by 1973, 1704; A 1977, 923)

445.700 Fees: Amounts; pollution control fund; use of money; maximum inspection fees.

1. In areas of the state where and when a program is commenced pursuant to NRS 445.630 to 445.670, inclusive, the following fees must be paid to the department of motor vehicles and accounted for in the pollution control fund which is hereby created as a special revenue fund:

(a) For the issuance and annual renewal of license for an authorized station or a fleet station $25;

(b) For each set of 25 forms certifying emission control compliance 50;

(c) For each form issued to a fleet station ..... 2.

2. All fees must be used by that department as needed to carry out the provisions of NRS 445.610 to 445.710, inclusive.

445.700 (continued)

3. The department of motor vehicles may prescribe by regulation routine inspection fees at the prevailing shop labor rate, including maximum charges for those fees, and for the posting of those fees in a conspicuous place at the authorized station.

(Added to NRS by 1973, 1704; A 1975, 315; 1977, 923; 1979, 109)

445.705 Unlawful acts. It is unlawful for any person to:

1. Possess any unauthorized evidence of compliance;
2. Make, issue or use any imitation or counterfeit evidence of compliance;
3. Willfully and knowingly fail to comply with the provisions of NRS 445.610 to 445.670, inclusive, or any regulation adopted by the department of motor vehicles; or
4. Issue evidence of compliance if he is not a licensed inspector of an authorized station or a fleet station.

(Added to NRS by 1977, 919)

445.710 Penalties.

1. A violation of any provision of NRS 445.610 to 445.710, inclusive, relating to motor vehicles, or any rule or regulation promulgated pursuant thereto relating to motor vehicles, is a misdemeanor. The provisions of NRS 445.610 to 445.710, inclusive, or any rule or regulation promulgated pursuant thereto, shall be enforced by any peace officer.

2. Satisfactory evidence that the motor vehicle or its equipment conforms to such provisions, rules or regulations, when supplied by the owner of such motor vehicle to the department of motor vehicles within 10 days after the issuance of a citation pursuant to subsection 1 may be accepted by the court as a complete or partial mitigation of the offense.

(Added to NRS by 1973, 1705)